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2
3 BILL NO. S-78-06-22

4 SPECIAL ORDINANCE NO. S-104-78

5 AN ORDINANCE approving an Agreement with
6 Kenneth Niemeyer, Real Estate & Develop-
7 ment, Inc., for construction of a sani-
8 tary sewer.

9 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
10 FORT WAYNE, INDIANA;

11 SECTION 1. That the Agreement dated May 31, 1978, between the
12 City of Fort Wayne, by and through its Mayor and the Board of Public Works
13 and Kenneth Niemeyer, Real Estate & Development, Inc., for:

14 SANITARY MAIN #1:

15 Beginning at an existing sanitary sewer man-
16 hole located 370+ LF east of and 43+ LF south
17 of the intersection of Autumn View Drive and
18 Tillman Road; thence southeasterly 295+ LF to
19 a proposed manhole; thence easterly 670+ LF
20 to a proposed manhole; thence southeasterly
21 300+ LF to a proposed manhole located 20+ LF
22 east of and 20+ LF south of the centerline
23 intersection of Thrush Avenue and Linden Drive;
24 thence southerly generally following the east
25 right-of-way of said Thrush Drive 620+ LF to
26 a proposed manhole located 5+ LF south of and
27 1+ LF east of the southwest corner of Branning
28 Hills Addition, Section I; thence generally
29 following the south right-of-way line of
30 Turnwood Drive 320+ LF terminating at a pro-
31 posed bulkhead located 5+ LF north of and 1+
32 LF east of the Northwest corner of lot #41 of
33 said Branning Hills Addition, Section I.

34 LATERAL #1:

35 Beginning at a proposed manhole located 20+ LF
36 south of and 20+ LF east of the centerline in-
37 tersection of Thrush Drive and Linden Drive;
38 thence easterly generally following the south
39 right-of-way line of said Linden Drive 700+ LF
40 to a proposed manhole located 20+ LF south of
41 and 20+ LF west of the centerline intersection
42 of Linden Drive and Melwood Court; thence nor-
43 therly generally following the west right-of-
44 way line of said Melwood Court 330+ LF to a
45 proposed manhole; thence westerly generally
46 following the south right-of-way of Leswood
47 Court 450+ LF terminating at a proposed clean-
48 out located 4+ LF north of and 2+ LF east of
49 the southeast corner of lot #13 of Branning
50 Hills Addition, Section I.

51 LATERAL #1-A:

52 Beginning at a proposed manhole located 20+ LF
53 south of and 20+ LF west of the centerline

intersection of Linden Drive and Evanwood Court; thence southerly generally following the west right-of-way of said Evanwood Court 660+ LF terminating at a proposed manhole located 5+ LF east of and 1+ LF south of the Southeast corner of lot #62 of Branning Hills Addition, Section I.

LATERAL #1-B:

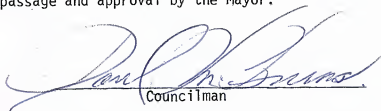
Beginning at a proposed manhole located 20+ LF south of and 20+ LF west of the centerline intersection of Linwood Drive and Melwood Court, thence southerly 290+ LF terminating at a proposed manhole located 1+ LF north of and 1+ LF east of the Northeast corner of lot #78 of Branning Hills Addition, Section I.

LATERAL #2-B:

Beginning at a proposed manhole located 20+ LF south of and 20+ LF west of the centerline intersection of Linden Drive and Melwood Court; thence easterly generally following the south right-of-way line of Linwood Drive 200+ LF terminating at a proposed bulkhead located 1+ LF west of and 5+ LF north of the Northeast corner of lot #84 of Branning Hills Addition, Section I.,

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


Councilman

APPROVED AS TO FORM
AND LEGALITY,


CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by noes, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 1978, at _____ o'clock _____ M., E.S.T.

DATE: 6-7-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Shingo, and duly adopted, placed on its passage. PASSED (POST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>X</u>	_____	_____	_____	_____
<u>HUNTER</u>	<u>X</u>	_____	_____	_____	_____
<u>MOSES</u>	<u>X</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 6-27-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. 8-104-78 on the 27th day of June, 1978.
ATTEST: (SEAL) Samuel J. Talarico
Charles W. Westerman CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of June, 1978, at the hour of 11:00 o'clock A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 29 day of June, 1978, at the hour of 8:30 o'clock _____ M., E.S.T.

Robert Elmsberg
MAYOR

Bill No. S-78-06-22

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance
approving an Agreement with Kenneth Niemeyer, Real Estate & Development,
Inc., for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance and PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

6-27-78
CONCURRED IN
DATE 6-27-78 CHARLES W. WESTERMAN, CITY CLERK

AGREEMENT
FOR
SEWER EXTENSION

THIS AGREEMENT made in triplicate this 31 day of May, 1978 by and between KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC. hereinafter referred to as "Developer", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

SANITARY MAIN #1:

Beginning at an existing sanitary sewer manhole located 370± LF east of and 43± LF south of the intersection of Autumn View Drive and Tillman Road; thence southeasterly 295± LF to a proposed manhole; thence easterly 670± LF to a proposed manhole; thence southeasterly 300± LF to a proposed manhole located 20± LF east of and 20± LF south of the centerline intersection of Thrush Avenue and Linden Drive; thence southerly generally following the east right-of-way of said Thrush Drive 620± LF to a proposed manhole located 5± LF south of and 1± LF east of the southwest corner of Branning Hills Addition, Section I; thence generally following the south right-of-way line of Turnwood Drive 320± LF terminating at a proposed bulkhead located 5± LF north of and 1± LF east of the Northwest corner of lot #41 of said Branning Hills Addition, Section I.

LATERAL #1:

Beginning at a proposed manhole located 20± LF south of and 20± LF east of the centerline intersection of Thrush Drive and Linden Drive; thence easterly generally following the south right-of-way line of said Linden Drive 700± LF to a proposed manhole located 20± LF south of and 20± LF west of the centerline intersection of Linden Drive and Melwood Court; thence northerly generally following the west right-of-way line of said Melwood Court 330± LF to a proposed manhole; thence westerly generally following the south right-of-way of Leswood Court 450± LF terminating at a proposed cleanout located 4± LF north of and 2± LF east of the southeast corner of lot #13 of Branning Hills Addition, Section I.

LATERAL #1-A:

Beginning at a proposed manhole located 20± LF south of and 20± LF west of the centerline intersection of Linden Drive and Evanwood Court; thence southerly generally following the west right-of-way of said Evanwood Court 660± LF terminating at a proposed manhole located 5± LF east of and 1± LF south of the Southeast corner of lot #62 of Branning Hills Addition, Section I.

LATERAL #1-B:

Beginning at a proposed manhole located 20± LF south of and 20± LF west of the centerline intersection of Linwood Drive and Melwood Court; thence southerly 290± LF terminating at a proposed manhole located 1± LF north of and 1± LF east of the Northeast corner of lot #78 of Branning Hills Addition, Section I.

LATERAL #2-B:

Beginning at a proposed manhole located 20± LF south of and 20± LF west of the centerline intersection of Linden Drive and Melwood Court; thence easterly generally following the south right-of-way line of Linwood Drive 200± LF terminating at a proposed bulkhead located 1± LF west of and 5± LF north of the Northeast corner of lot #84 of Branning Hills Addition, Section I.

All sewers consist of 2525± LF of 8-inch sewer pipe and 2000± LF of 12 inch sewer pipe in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the office of the Chief W.P.C. Engineer of the City Utilities of the City, and known as Branning Hills, Section I Sanitary Sewers,

which plans, specifications and profiles are by reference incorporated herein and made a part hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER:

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION:

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER:

Said sewer, when accepted by the City will serve the following described real estate to be platted as Branning Hills, Section I.

A part of the North half of the Northeast quarter of Section 31, Township 30 North, Range 13 East, Allen County Indiana, more particularly described as follows: Commencing at the Northeast corner of the Northeast quarter of Section 31, Township 30 North, Range 13 East; thence proceeding North 90 degrees 00 minutes 00 seconds West along the North line of the Northeast quarter of the aforesaid Section, Township, and Range a distance of 270.000 feet; thence leaving the North line of the Northeast quarter of the aforesaid Section, Township, and Range South 01 degrees 14 minutes 18 seconds West to a point on the South right-of-way line of Tillman Road said point being situated on the Northwest corner of Lot #1, Cassel Hills Addition, Section I, a subdivision in the aforesaid Section, Township, and Range, said point also being the point of beginning; thence continuing South 01 degrees 14 minutes 18 seconds West along the West boundary of Cassel Hills Addition, Section I, a subdivision in the aforesaid Section, Township, and Range, a distance of 1288.06 feet to a point on the Southwest corner of lot #61, Cassel Hills Addition, Section I; thence South 89 degrees 51 minutes 40 seconds West along the South line of the North half of the Northeast quarter of Section 31, Township 30 North, Range 13 East a distance of 1074.69 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 310.00 feet; thence North 39 degrees 51 minutes 40 seconds East a distance of 80.00 feet; thence North 38 degrees 52 minutes 34 seconds East a distance of 94.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 114.98 feet; thence North 28 degrees 20 minutes 00 seconds West a distance of 115.19 feet; thence North 46 degrees 51 minutes 51 seconds West a distance of 120.08 feet; thence North 06 degrees 00 minutes 55 seconds East a distance of 270.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 185.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 25.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 130.00 feet; thence North 04 degrees 00 minutes 48 seconds West

to a point on the South right-of-way of Tillman Road a distance of 315.77 feet; thence North 90 Degrees 00 minutes 00 seconds East along the South right-of-way of Tillman Road a distance of 784.63 feet to the point of beginning containing 28.76 acres more or less.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connection into City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST DEVELOPER'S AREA:

An area connection charge of \$ 645.00 per acre must be paid to City before any construction commences. These charges are in addition to the local charge to install the sanitary sewer. These charges satisfy area connection and tap-in fee due the South Anthony Interceptor Res. 181 adopted April 4, 1968 and the Tillman Road Interceptor Res. 299-77, which was combined into Res. 65-277-16.

5. BOND:

This contract is subject to Developer furnishing a satisfactory Guaranty Bond for 25 per cent of the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATION ON USE:

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION:

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described

in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE:

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17, and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17, I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL:

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

Kenneth Niemeyer
Corporate Secretary
Real Estate & Development, Inc.

REAL ESTATE & DEVELOPMENT, INC.

By Kenneth Niemeyer
Kenneth Niemeyer, President
Developer

CITY OF FORT WAYNE, INDIANA

By Robert E. Armstrong
Robert E. Armstrong, Mayor "CITY"

BOARD OF PUBLIC WORKS

By: Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

By: Ethel H. LaMar
Ethel H. LaMar, Member

By: _____
Max G Scott

ATTEST:

Ursula Miller
Ursula Miller, Clerk

Approved as to form and legality:

Larry J. Burke
Larry J. Burke
Associate City Attorney

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State,
personally appeared Kenneth Niemeier
who acknowledged the execution of the foregoing agreement for sewer extension
as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 21st day of April, 1978.

Lena M. Manganiello
Lena M. Manganiello, Notary Public
Resident of Allen County

My Commission Expires:

April 11, 1979

STATE OF INDIANA)
)
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State,
personally appeared Robert Armstrong, Mayor; Henry P. Wehrenberg, Chairman of the
Board of Public Works; Ethel H. LaMar, and Max G Scott, Members of the Board of
Public Works; who acknowledged the execution of the foregoing agreement
for sewer extension as and for their voluntary act and deed for the uses and pur-
poses therein contained.

WITNESS my hand and notarial seal this 31 day of May, 1978.

Anne J. Fox
ANNE J. FOX, Notary Public
Resident of Allen County

My Commission Expires:

3/6/80

This instrument prepared by: Philip R. Boller, Chief Water Pollution Control Engineer

TO: DON BODEKER

CC: R. Barnett

J. Leiter

P. Sullivan

Technical Services File TECHNICAL SERVICES

Project File

Work Request

CUSTOMER NAME KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC. T.S.NO.

ASSIGNED _____

ADDRESS 10201 WAYNE TRACE

PROJECT: _____

DATE REQUESTED May 16, 1978

DATE NEEDED _____

Contractor will notify 24 hrs.
in advance.

TYPE (S) OF WORK TO BE PERFORMED

☐

DRAFTING

☐

CLERICAL

☐

SURVEYING

☐

BLUEPRINT

☒

INSPECTION

☐

OTHER _____

PROJECT DESCRIPTION (IF APPLICABLE) BRANNING HILLS, SECTION I SANITARY SEWER

DETAILED INSTRUCTIONS FOR SERVICES REQUIRED _____

REMARKS: _____

CUSTOMER TO BE CHARGED *Kenneth Niemeyer*

W.O.# _____

AUTHORIZATION SIGNATURE _____

POSITION _____

DEPARTMENT HEAD APPROVAL *Don Bodeker*

Revised Nov. 1977

W.P.C. ENG, DEPT.
ROOM 700, CITY - COUNTY BLDG.
FT. WAYNE, IND. 46802

4 95

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - BRANNING HILLS ADD., SEC. I

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS J-78-06-22

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR BRANNING HILLS ADDITION, SECTION I,
INVOLVING AUTUMN VIEW DRIVE, TILLMAN ROAD, THRUSH DRIVE, LINDEN DRIVE, TURNWOOD DRIVE,
MELWOOD COURT, LESWOOD COURT, EVANWOOD COURT & LINWOOD DRIVE. DEVELOPER FOR THE PROJECT IS
KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC., WHO WILL CONSTRUCT SEWER TO SERVE THE
ABOVE-DESCRIBED AREA.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF SEWER TO SERVE NEW AREA UNDER DEVELOPMENT, I.E.
BRANNING HILLS ADDITION, SECTION I

EFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT SEWER TO SERVE AREA ABOVE-DESCRIBED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND
EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE _____

Engel